

1901-036 Chancery Causes: James A. Newman, recd. vs. William Pennington &
Lee Co.

Cowan McClung & Co., Phillips, Burgin, Burgin

CA-Debt
T-Property

To the Honorable W.T. Miller, Judge of the Circuit Court for Lee County, Virginia:

Humbly complaining, your orator, James A. Newman, Receiver &c. will respectfully represent and show unto your honor that on the 4th day of March 1895 he was appointed a receiver of the funds in the hands of William Pennington as guardian for Abbie L. Newman nee Abbie L. Phillips, one of the heirs at law of Frances Phillips, deceased, and then the wife of your orator; that on the day of his appointment as such receiver he executed bond as such in the penalty of fifteen hundred dollars with security approved by the court; and that he thereupon took the oath prescribed by law, as will more fully appear from a copy of the order of his appointment which will be found filed herewith marked "A".

Your orator will further show unto your honor that at the second October Rules 1895, for the circuit court of Lee county, he filed his bill in chancery against the said William Pennington and Alex. N. Pennington, the object of which was to ascertain the amount of money in the hands of the said William Pennington as guardian for the said Abbie L. Newman, add to collect the same, when ascertained, from the said William Pennington add his security, A. N. Pennington; that such proceedings were thereupon had that at the November Term 1895 of said court the following order was made:

Virginia,

At a circuit court continued and held for Lee county, at the court-house thereof on the 13th day of November 1895.

James A. Newman, Receiver &c.

Plaintiff.

vs.

In Chancery.

Wm Pennington et als.

Defendants.

This cause came on this day to be heard upon the bill of the complainant and the answer of the defendant, William Pennington and exhibit therewith, and was argued by counsel. And it appearing to the court that process has been served upon A. N. Pennington for more than 15 days before the first day of this term of the court, and that he has failed to appear, plead or demur to said bill, it is taken for confessed as to him. And it appearing from the exhibit filed with

the answer of the said Wm. Pennington that there is due from him to his ward, the said Abbie Newman, the sum of \$805.82 1/2 as of the 1st day of March 1895, it is adjudged, ordered and decreed that the plaintiff recover of the defendants the sum of eight hundred and five dollars and eighty-two and one-half cents with interest thereon from the first day of March 1895 till paid subject to such credits as the said William Pennington may show that he has paid to the said Abbie or her receiver since that date. It is further adjudged, ordered and decreed that the plaintiff recover his costs in this behalf expended, but, by agreement of parties, in taxing said costs the clerk will tax against said defendants an attorney's fee of only \$2.50, and by like agreement upon the part of the complainant no execution is to issue upon this decree until after the 1st day of May 1896, until which time the said William Pennington is given to furnish the credits aforesaid. And this cause is stricken from the docket.

Your orator here refers to said chancery cause for a more particular description of the proceedings therein had.

Your orator will further represent that the costs of said chancery suit amounted to the sum of \$8.12, as taxed by the clerk.

Your orator will further represent and show unto your honor that the 1st day of May 1896 has long since passed, but that the said Wm. Pennington has never furnished the credits aforesaid as required by the aforesaid decree. However your orator is still willing that the said Pennington shall have all proper credits.

Your orator alleges that no part of said judgment of \$805.82 1/2 or of the \$8.12 costs has ever been paid to him, but that the same and every part thereof is still due and owing.

Your orator alleges that his judgment aforesaid has been duly docketed in the office of the clerk of the county court of Lee county in J.L.D. No.3. page 146.

Your orator will now further represent and show unto your honor that since the rendition of said decree aforesaid, to wit, on the ____ day of _____ 1896, the said Abbie L. Newman has departed this life intestate; that at the time of her death and for some ____ years prior thereto she was the wife of your orator; that at the time

of her death she was still an infant under the age of 21 years; and that, as her husband, he is, as he is advised, her sole heir to said fund, the same being personal property.

Your orator will now show your honor that the said Wm. Pennington is the owner of a very large and valuable real estate situated in Lee County, Virginia; that he is charged on the Books of the Commissioner of the Revenue for the Second District of said County, in Jonesville Magisterial District, ~~with~~ for the year 1896, with 40 acres of land lying on Stone mountain, with 65 acres lying on Cane creek, and with 120 acres lying in Poor Valley; and that on the Books of the Commissioner of the Revenue for the Third District, in Rocky Station Magisterial District for the year 1896, he is charged with a tract of 550 acres described as the D.M. Tract. This last mentioned is the land on which the said Wm. Pennington now resides.

Your orator will also show your honor that the said A.N. Pennington is the owner of a large and valuable real estate situated in said county of Lee; that he is charged on the Books of the Commissioner of the Revenue for the Third District, in Rocky Station Magisterial District ~~with~~ for the year 1896, with a tract of land containing 460 acres lying in the "Pocket", with a tract containing 126 acres lying on Stone mountain, and with a tract containing 338 acres lying on Ely's creek.

Your orator will now show your honor that on the 3rd day of May 1895 the said William Pennington, together with Barbara J., his wife, executed to E.W. Pennington, Trustee, a deed conveying to him the 550 acre tract of land above set out and another tract or lien on same for the purpose of securing certain monies to Cowan, McClung & Co., of Knoxville, Tennessee. A copy of said deed is filed herewith as a part of this bill marked "B". Your orator is not informed as to how much is yet due on the deed of trust.

Your orator is advised that his judgment aforesaid constitutes a lien upon the lands aforesaid of the said William Pennington and A.N. Pennington, and also upon any other lands that they may own in said county of Lee, if any.

Your orator is not advised as to the amount of other liens, by judgment, against said lands, but he is advised that there are others

and your orator alleges that said lands will not, in five years renting rent for a sum sufficient to pay said liens.

Now, the object of this bill is to collect from the said William Pennington and Alex. N. Pennington the amount of your orator's judgment aforesaid, with interests and costs, to enforce the lien of said judgment, and to subject to the payment of the same the real estate aforesaid of the Wm. Pennington and Alex. N. Pennington. And being without adequate remedy at law, your orator prays your honor's court of chancery to take cognizance of his cause and grant him the proper relief. To attain this object and end, your orator prays that William Pennington, Alex. N. Pennington, Barbara J. Pennington, E. W. Pennington, Trustee, and Cowan, McClung & Co. be made the parties defendant to this bill; that they each be required to answer the same but they need not do so under oath as that is waived; that the said William Pennington and A. N. Pennington each answer accurately the lands owned by them, and the location thereof, if they own other lands than those above mentioned and set out; that said Cowan, McClung & Co., Wm. Pennington and E. W. Pennington each especially answer how much is owing from said Wm. Pennington to said Cowan McClung & Co. on the deed of trust aforesaid, and when the same became or will become due; that a commissioner be appointed for the purpose of ascertaining liens and the rental value of said lands; that, upon a final hearing, the lien of your orator's judgment be enforced against said real estate and enough thereof sold to satisfy the same, costs &c.; and that all such other, further and general relief be granted your orator as his cause may merit.

May she issue &c., and your orator will ever pray.

C. T. Duncan
L. T. Hyatt 3/p.g.

James A Newman recover
vs } Bill in Chy
Jm Pennington et al

1897 1st Feby rules Sumo 2d
+ D M
11 2nd Feby rules D M
Conf. & Cause set for
hearing.

1.

To the Honorable W.T. Miller judge of the Circuit

Court of Lee County Virginia:-

Humbly complaining your Orator, J.A. Newman, receiver &c. will respectfully show your honor, that heretofore, at Rules held in the Clerk's Office the Circuit court in and for Lee County Virginia, on the 1st Monday in February 1897, he filed his original bill against William Pennington and Alexander Pennington, the object of which was to enforce the lein of a judgement which he had theretofore, as receiver of the said Abbie L. Newman, recovered against said William Pennington as the guardian of the said Abbie L. Newman, formerly Abbie L. Phillips, and the said Alexander N. Pennington as the surety of the said William, in his official bond as such guardian. And now here referring to said original bill and adopting the several allegations therein contained and making them a part of this amended bill, by way of amendment, your orator will now show unto your honor that since the filling of said original bill he has ascertained, that in addition to the said Alexander Pennington as surety of the said William Pennington, as guardian of the said Abbie L. and her sisters that the following named persons, to wit, James D. Pennington, John L. Pennington and John S. Burgin were also securities of the said William in one of the bonds which he executed as said guardian, and such being the case your Orator is advised that the said James D. Pennington, J.L. Pennington and John S. Burgin are equally bound along with the said Alexander N. for the official acts and liabilities incurred by the said William in his official character as guardian as aforesaid. ~~XXXXXXXXXXXX~~ Your Orator will now show your honor, that each of said parties are the owners of valuable real and personal estate situated in this county which he is advised should be charged equally with the property of the said Alexander N. should the payment of said judgement devolve upon the sureties of the said William.

Your Orator will now show your honor, that as stated in his original bill, the said Abbie L. after the rendition of said judgement, but before the filling of his original bill, departed this life intestate, leaving surviving her, her husband, your Orator, and two children, to wit, Henry L. Newman and Ettie E. Newman, both of whom are infants of very tender years the eldest being only about five years old.

[illegible][illegible]

Your Orator will now show your honor that he is informed that the said William Pennington claims that he invested the money of his said wards, of which the said Abbie L. was one in lands, as to this claim your Orator knows nothing, but if it is true the wards are not bound by said investment unless it was made pursuant to an order of a court of competent jurisdiction, but if said money was so invested, the lands thus purchased ought, as your orator is advised, to be held as additional security for the wards of said guardian, and the protection of the sureties of said guardian. Now the object of this amended bill, as well said original bill is to enforce the lien of said judgement set out in said original bill and to collect the money due from William Pennington to his former Ward, Abbie L. Newman nee Abbie L. Phillipps and to have the same properly distributed to those entitled thereto, to subject the lands subject to the lien of said judgement ^{to} ~~sold for~~ for the payment thereof and to subject the means of the other sureties in the official bond of the said William Pennington guardian as aforesaid to the payment of the sum due to your Orator as receiver of said Abbie L. Newman, if resort

to the means of said sureties becomes necessary, and being without adequate remedy at law, and only properly relievable in a court of Equity your Orator prays your honor to take cognizance of his cause and grant him proper relief, and to this end he makes William Pennington guardian of the said Abbie L. Newman, nee, Abbie L. Phillips Alexander N. Pennington James D. Pennington, John L. Pennington and John S. Burgin sureties in the official bond of the said William as guardian aforesaid, Henry L. Newman and Ettie E. Newman, the last two of whom are children and heirs at law of the said Abbie L. Newman, Cowan McClung and Co. E. W. Pennington trustee and Barbary J. Pennington ~~be made~~ ^{and he prays} the parties to this bill that they each be required to answer the same, but they need not do so under oath as that is waived, that a guardian ad litem be appointed to answer for and defend the rights of said infants, that upon a final hearing, a decree enforcing the lien of your Orators judgement be entered and enough of the lands of said William Pennington and the sureties in his official bond as guardian as aforesaid be sold to satisfy said judgement and pay to your Orator the amount due him as receiver as aforesaid ~~the amount due to~~ ^{of} the said Abbie from her guardian and for such other and further relief both special and general as the merits of his case demands. May Spa issue &c.

L. T. Turner

L. T. Hyatt 3 Attys for Pff.

James A. Newman Receiver
by counsel

J. A. Thomas ⁷⁶ ~~Re~~

⁷⁵ ~~2~~ Amended

~~3~~ Bill.

Wm Punnington Gordon ⁷⁶

and others.

1897 ^{amended} 1st May ruled bill
filed & pa 2d & 3d & 4th

11 1st June rules taken
the last Monday in
May & 4th Conf & Cause
Set for hearing.

(8)

William Pennington,

Deft

vs.

Jas. A. Newman,

Complt.

To the Hon. W/ T. Miller? judge of the Circuit court for Lee County:.

The demurrer and answer of Wm/Pennington to a bill of complaint filed in this court by Jas. A. Newman ^{Receiver} against your respondent and others; and for demurrer to said bill, your respondent is advised that the said bill of the said complainant is not sufficient in law, and of this, he prays judgement.

But not waiving said demurrer and insisting thereon, should further answer be required of him, answering says: That your respondent supposes it is true that the complainant, Newman was appointed receiver for Abbia L. Newman nee Abbie Phillips, one of the heirs at law of Francis Phillips, decd., who was then the wife of the said complainant; and that he executed bond as stated by him in his bill as such receiver, in the penalty of \$1500.00, and approved by the court with ~~his~~ surety: that he supposes that exhibit "A" shows said ~~proceedings~~ of his appointment as such receiver; and your respondent also supposes it to be true that the proceedings were had, as alleged by the complainant against him and A. N. Pennington for the purpose of collecting the sum due his wife, Abbie; and that the order was made as set out in said bill of the complainant, and it is also true that no part of the sum of money mentioned in said order has not been paid, but a good and sufficient reason will hereafter be assigned why the same has not been paid. It will be observed from said order that your respondent was given a time in which to bring in credits, and the plaintiff graciously says that he is willing that the same may still be done. Now your respondent says and alleges that the following expenditures were

1. itures were made for the said Abbie, ^{which} were proper and judicious
2. expenditures, and ^{for} which he has no credit ~~for~~, to-wit:
3. For board, clothing, medicines ~~xxxobblingx~~ schooling ^{from} Jan.
4. 1889 to July, 1893 \$200.00, fifty dollars per year. And respondent
5. states, that as guardian of said Abbie, he received ~~from~~ as her
6. distributive part of the personal property of her father's,
7. the said Francis Phillip's estate only about \$92.00, which
8. came to his hands about ^{Jan.} 1890; and the expenditures for the said
9. Abbie as sated as aforesaid has ~~a~~ more than exhausted ~~the~~ said
10. \$92.00, her said distributive share in her father's personal
11. estate.

12. Your respondent will further admit that it is true
13. that the said Abbie was at the time of and after the rendi-
14. tion of said judgement was the wife of the said complainant;
15. ~~that~~ some time, in the summer of 1896 she departed this life
16. intestate and under the age of twenty-one years. But your re-
17. spondent denies that the ^{and distributive of} complainant is the sole heir ^{of} the
said sum mentioned in said judgement, or the sole heir to his
said wife, and ~~he~~ he denies that the same or any part ~~whereof~~ is
~~that kind of personal property which entitles him to the same~~
~~personal property~~, and denies that the estate of the said Abbie
in the hands of your respondent is personal property, be cause
this fund and every part thereof is funds which came out of
the sale of her lands which she inherited from her father and
mother, her interest having been sold by decree of the court
^{while she was an infant}
in a chancery cause of J.A.G. Hyant and your respdent as
guardians etc. vs. Hiram Kinser et als, and to which suit
reference is here made, and having been so sold, your respond-
ent is advised that by virtue of section 2626 of the Code of
Virginia, said fund belongs ~~to those belonging~~ to those to whom
the lands themselves would have decended, in the event they had
not been sold, who in this case are the two infant children

1 of the said Abbie, to-wit. *Newman and*
2 *Newman* And your respondent will farther
3 show unto your honor, that he soon after this money came to his
4 hands, ~~he~~ invested the same in other lands, and stills holds
5 these lands, which he has always intended to be for the use
6 and benefit of his wards, and this investment was made for
7 them on the advise of counsel, and was deemed to be the best
8 thing that could have been done for them at the time.

9 And your respondent will further show unto your honor, ~~that~~
10 after the execution of the bond mentioned in complainant's
11 bill, he was required by the court in said chancery cause of
12 Hyatt & Pennington Vs/Kinser et als to execute a new bond in a
13 penalty of \$5000.00, which on the ~~4~~th day of March, 1890, he
14 did do with J.D., J.L. & A.N. Pennington and J.S. Burgin as his
15 sureties, and which said last bond he is advised that the same
16 supersedes and takes the place of said bond mentioned in
17 said bill, or in other words, the first bond became ^{annulled & by reason of} ~~a part of~~
18 the last bond, and said chancery cause of Hyatt and Pennington
19 is again here referred to for the evidence of these facts.

Your respondent is called up ^{on} to give the lands which
he owns; and in answer to that inquiry will say that he owns
in the 2nd. magisterial district about 300 acres of land, which
which he purchased with the money of his said wards
he purchased from Silas Flanary, C.D. Russell, John S. Burgin, J.
M. Parsons, and inherited from the estate of David Pennington
and he also owns about 500 acres where he now lives; but on
this tract of land Cowan, McClung & Co. have a deed of trust
the same deed of trust mentioned in complainants bill. Your re
spondent owes said Cowan, McClung & Co. \$1974.⁴⁶, which became
subject to a credit of \$110.22 Dec. 21st 1895
due on May, 3rd, 1895, \$241.66 which became due on August, 6th.
1895, and \$301.⁸⁴, which became due on 7th day of October
1895, all of which sums are secured by said deed of trust. And

thier deed of trust is prior to the pretended judgement of
said complainant, and your respondent says that the said Cow-
an, McClung & Co. are not insisting on the enforcement of their
deed of trust. at present. Now having answered all and every
thing that ^{it} ~~he~~ is deemed necessary for him to answer, and deny-
ing generally all matters and allegations not admitted or her-
etofore denied, he prays to be hence dismissed with his rea-
sonable costs in this behalf expended.

..... *William Pennington*
By Amersley

*E. W. Pennington } atty.
B. H. Sewell } for Respondent*

William Cunningham
Ad { Decree
 Answer.

J. A. Newman Clerk

Filed in open Court
and by leave thereof
March 8th 1897
A. B. Munsey Clerk

(4)

1 To the Hon. W. T. Miller, Judge of the Circuit Court for Lee
2 County:

3 The demurrer and answer of A. N. Pennington to a bill of
4 complaint filed in this honorable by Jas. A. Newman as receiver
5 etc. against him and others; and for demurrer to said bill, says
6 that he is advised the bill of the said complainant is not
7 sufficient in law to call upon him to answer as the same is
8 insufficient in law and of this he prays judgement.

9 But if mistaken in the cause of his demurrer and
10 should other and further answer be required of him, answering
11 says: That he has read the answer of his co-defendant, William
12 Pennington and in so far as the same is applicable, he adopts
13 that answer as that of his own, and relies thereon. But your
14 respondent desires to state just here, that at the time of the
15 institution of the first suit mentioned in complainants bill
16 bill by said Newman, he was served with process, and thought it
17 strange, that others were not made parties to said suit, than
18 himself and his father, William Pennington, but on inquiry was
19 informed that the counsel of said Newman in said first suit
20 had investigated the matter, and that the only bond to be
21 found given by the said William Pennington as such guardian
22 was a \$2000.00 bond, and that being the case your respondent
23 would be held liable thereunder ^{as sole surety}, so he under that impression
24 allowed judgement to go against him. ^{without making any defense} But he now finds under a
25 farther and more recent investigation, that there was another
26 and a larger bond executed by said William Pennington in a pen-
27 alty of \$5000.00, with J. D. ^{Pennington} J. L. Johns S. Burgin and your re-
28 spondent as sureties; that this larger bond was executed on the
29 4th. day of March, 1890, long after the execution of said \$2000.
30 bond, and that this latter bond supersedes and takes the place

1 of the said former bond of \$2000.00, and this being the case
2 and this cause being in a court of equity, where justice will
3 be done all parties, your respondent prays that the said com-
4 plainant be required to amend his said bill, making said
5 J.D. Pennington, J.L. Pennington and John S. Burgin parties de-
6 fendants to this bill, who were your respondents co-sureties
7 on said last, or larger bond; and that this larger bond was
8 executed in the last chancery cause of Hyatt & Pennington
9 Gurads. etc vs. Hiram Kinsler et als., and to which reference is
10 here made for proof of these facts. Now upon this state of
11 facts, your respondent is advised that this judgement is void
12 as to him, and is therefore, no lien upon any of his real estate
13 If at any rate, this should be treated as a judgement, he is ad-
14 vised, that all the effects of his principal should be exhausted
15 in payment of the same before any of your respondent's ef-
16 fects could be attacked.

17 Your respondent says that he
18 owns all the lands mentioned in the complainant's bill, except
19 14 acres off the 460 acre tract, and 3 acres off the 338 acres
20 tract, and now denying all ^{and} every thing not heretofore denied
21 or admitted, your respondent prays to be dismissed from this
22 bill with his reasonable costs.

B. St. Swartz
C. W. Pennington
Counsel for
J. D. Pennington

H. N. Pennington
By Counsel

This answer is excepted to. It sets up a de-
fense that ought to have been made to for-
mer suit, but which now comes too late.

And in fact the answer -
sets up no defense. He admits
his liability as sole security
in one bond and joint surety
in another. He suffered judgment
to go against him and is bound
by it.

Duncan & Hyatt

C. L. Duncan
L. T. Hyatt 3 p. 9.

A. W. Huntington

ad. } Answer

J. A. Newcomb

Filed in open court
and by leave thereof
March 5th 1897
J. B. Munnick Clk

(5)

Sustained excepted to.

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee County:

The joint and separate answer of Henry L. and Etty Newman, infants under the age of 21 years. By R. L. Pennington, their guardian ad litem, assigned to defend them in the suit, to a bill of complaint exhibited against them and others by James A. Newman, in the Circuit Court for Lee County.

The respondent, reserving to themselves the benefit of all just exceptions to said bill, for answer thereto, or to so much ~~thereof~~ thereof as they are advised that it is material they should answer, by their said guardian ad litem, answers and says: -

That they are infants of tender years, and by reason of their infancy are ^{incapable} capable of understanding, or of taking care of their rights and interests. They therefore by their said guardians ~~xxx~~ commend themselves and their rights and interests to the protection of the court, and pray that no decree may be pronounced which will tend to their prejudice.

And having fully answered, and the said respondent pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray, etc.

Guardian

Robert L. Pennington
ad litem for Henry L. & Etty Newman

This day R. L. Pennington personally appeared before me & made oath that the foregoing answer contained the truth to the best of his knowledge & belief. Given under my hand this the 13th June 1894.

A. B. Mursey

*Clerk of C. C. Ct.
Lee Co.*

James A. Newman, Compl't.

Answer of

vs:

Guardian ad Litem

William Pennington, et al, Defts.

*Filed in open court
and by leave thereof
June the 15th 1897
A B Munsey Clerk*

(11)

To the Hon. W.T. Miller, Judge of the Circuit Court for Lee County, Virginia.

The joint demurrers and answers of James D. Pennington, J.L. Pennington, A.N. Pennington and John S. Burgan to an amended bill filed in said court by J.A. Newman, receiver &c., against them and others.

Respondents say that said amended bill is not sufficient in law, and ~~demur~~ thereto, and not waiving said demur, should further answer be required of them they answer as follows:

The respondent A.N. Pennington says he has answered the original bill in this cause and asks to adopt the same as and for a part of his answer to this amended bill, as far applicable and necessary to his defence thereto.

All of said respondents ask that the answer of their co-defendant, William Pennington, may be taken and adopted for a part their answer to this amended bill.

Respondents say it is true that they are the sureties upon one of the bonds of the said William Pennington as guardian, and as to their liability thereon will depend upon the circumstances under which they executed it as shown in said William Pennington's answer.

Respondents say they do not know of their own knowledge of the status of the said William Pennington, guardian of the said wards, and call for strict proof of any liability against him that will be to their prejudice, or that will in any way affect them.

Respondents say it is true that they are the owners of valuable real estate in Lee county, but they are advised that before they can be held personally liable by reason of their said suretyship, or their property subjected in this cause, that the property of the said William Pennington be first exhausted, and they ask that all legal and equitable remedies be first exhausted to accomplish that end.

and that which he may have for said ward,
As to the question of custody they rely upon Wm. Pennington in
Respondents denying each and every allegation of said amended bill, not herein before admitted or denied, and having answered as fully as it is material, they pray to be hence with their reasonable costs in this behalf expended. And they will ever pray &c.

E.W. Pennington & B.H. Swamy,
Attys for Respondents,

To the Hon.W.T.Miller, Judge of the Circuit Court for Lee County,
Virginia.

The separate demurrer and answer of Wm.Pennington, Guardian &c.
to an amended bill of J.A.Newman, receiver &c., filed in said court
against him and others.

Respondent says that said amended bill is not sufficient in
law, and demurrs thereto, and not waiving said demurrer, but should
further answer be required he answers as follows:

Respondant says that the complainant in his amended bill has
stated the proceedings heretofore taken by him in said cause and
refers to and adopts the allegations of his original bill in this
his amended bill, and respondent refers to and adopts his answer
to said original bill as and for an answer also to this amended bill,
so far as the same may be applicable and necessary for his defense
thereto.

Respondant says that it is true that ~~the~~ James D.Pennington,
John L.Pennington and John S.Burgan were also his sureties on one
of the bonds executed by him as said guardian and whether or not these
said sureties are equally bound with A.N.Pennington for the guar-
dian's official acts and liabilities will depend upon the circum-
stance of the case, as respondent qualified as guardian in the Coun-
ty Court of Lee County, Virginia, with A.N.Pennington as his only
surety, and afterwards he gave bond with all of said parties as sur-
ties in the chancery cause of Pennington and Hyatt vs. Hiram Kinser
et al, lately decided in said court to enable him to receive the
money of his wards arising from the sale of certain real estate in
said cause.

Respondant says it is true that the said Abbie L.Newman, after
the said Judgment, and before the filing of said original bill, de-
parted this life intestate, leaving surviving her her husband and
two children, Henry L. and Ettie E. Newman, both of whom are infants,
the eldest of whom is about five years old.

Respondant says it is true, as stated by complainant, that the
fund in his hand as guardian of the said Abbie L., treated as per-
sonal estate, he is mistaken, and that he is also mistaken that it

1 descended to him as husband under the law of descents and distribu-
2 tions, and respondent denies that should ^{the} fund be treated as real
3 estate, under section 2626 of the Code, that he is tenant by the
4 curtesy in the same and ~~is~~ entitled to use the said fund during his
5 natural life.

6 Respondant says that as to the investment of said wards' funds
7 in real estate by him, it is true, and that he holds the same for
8 their benefit to the extent of their interest therein, and being
9 for their benefit, he is advised that a court of equity will hold
10 them bound to it, and especially so when the investment is safe and
11 judiciously made at the time under the advice of counsel.

12 Now denying each and every allegation of said amended bill,
13 not herein before admitted or denied, and having answered as fully
14 as he is advised that it is material, ^{hence} he prays to be dismissed with
15 his reasonable cost in this behalf expended. And he will ever pray
&c.

E. W. Remington & B. H. Sewell
Attys. for Respondant.

+++++

Wm Pennington
 Adm'r
 J. A. Newman Recd

~~(10)~~

(3)

+++++

Att'y for defendant.

And especially so when the investment is safe and
 is advised that a court of equity will hold
 to return of their interest therein, and being
 hence
 And having answered as fully
 as the material, he prays no dismissal with
 costs in this behalf expended. And he will ever pray

For defendant says that as to the investment of said funds during his
 natural life.

entirely in the same and he entitled to use the said funds during his
 estate, under section 3333 of the Code, that he is tenant by the
 joint, and respondent denies that should fund be treated as real
 descended to him as husband under the law of descents and distribution.

James A. Newman, Receiver &c.

vs. (In Chancery.)

William Pennington et als.

This cause came on this day to be heard on the papers formerly read in the cause and the report of L.T. Hyatt, special commissioner, filed March 5th, 1901, showing full collection of the purchase money bonds executed to him by L.M. Zion, purchaser, and others, and the full disbursement of the same to the plaintiff, who was entitled thereto, and was argued by counsel. On consideration whereof, and there being no exceptions to the said report, it is adjudged ordered and decreed that the same be ~~reaffirmed~~ confirmed and approved. And it further appearing that the said L.M. Zion has now fully complied with his purchase, it is further adjudged, ordered and decreed that L.T. Hyatt, who is hereby appointed a special commissioner for the purpose, do make, execute and deliver to the said L.M. Zion a deed conveying to him with special warranty the said "Rock Lick tract" and the "Stone Mountain tract" of land purchased by him from said commissioner as shown by the report of sale filed in this cause, and report his action hereunder to some future day of this term, until which time this cause is continued.

James A. Newman, Receiver
vs. { Du By.

Wm Pennington & als.

Decree Confirming
Report of Collection
& Disbursement &
Appointing Commr.
to make deed.

Entered on chex 213. No 6
Page 494

Enter this decree

NEW

March 5th 1901.

(22)

of this term, until which time this cause is continued.
this cause, and report his action hereunder to some future day
from said commissioner as shown by the report of sale filed in
tract" and the "Stone Mountain tract" of land purchased by him
a deed conveying to him with special warranty the said "Rock Tick
the purpose, do make, execute and deliver to the said T.M. Nixon
T. T. Hyatt, who is hereby appointed a special commissioner for
his purchase, it is further adjudged, ordered and decreed that

This cause came on this day, to be heard on the papers

William Pennington et als.

vs.

(In Chancery.)

James A. Newman, Receiver &c.

James A. Newman, Receiver &c.

vs.

William Pennington et als.

This cause came on again his day to be heard upon the papers formerly read in the cause and the report of ~~xxxx~~ L.T. Hyatt, Special Commissioner, showing sale of the "Rock Lick tract" and the "Stone Mountain tract" of lands belonging to A.N. Pennington, filed in said cause on the 13th day of March, 1900, and was argued by counsel. On consideration whereof, it is adjudged, ordered and decreed that the said report and sale be and theyz are each hereby confirmed, there being no exceptions to the said report and the same having been filed the time required by law; that the said special commissioner pay out to those entitled the ninety-one dollars and seventy-two cents (\$91.72) costs and commissions in his hands, taking proper receipts; that the said special commissioner proceed to collect in such manner and by such means as he shall deem most expedient the for the sum of three hundred and twenty-seven and 76/100 dollars each three bonds⁷² executed to him by the said L.M. Zion, the purchaser, and J.M. Zion and Ira G. Sprinkle, his sureties thereon, as they severally fall due, and disburse the same, when collected, to the parties entitled under the proceedings of this cause; that said commissioner report his action to court; and that this cause be continued.

James A. Newman, Receiver &c.

vs. (In Chancery,

William Pennington et al.

Decree confirming report of
sale to L.M. Zion.

En- on Chy. 10³
nob. p 393

(20)

Enter this decree

June 1900.
H. C. W. Stearn

James A. Newman, Receiver &c.

Plaintiff.

Vs.

In Chancery.

William Pennington, A.N. Pennington, Barbara J.

Pennington, Cowan McClung & Co., E.W. Pennington,

Trustee, James D. Pennington, John L. Pennington,

John S. Burgan, and Henry L. Newman and Etty

Newman, the two last named being infants

under the age of twenty-one years

Defendants.

This cause came on this day to be heard upon the original bill the the complainant, the demurrer and answer of William Pennington to said bill, ^{separate} joinder in said demurrer and exceptions to said answer by the plaintiff, the answer of A.N. Pennington to said bill, ^{filed by leave of court March 5th 1897} joinder in said demurrer and exceptions to said answer endorsed thereon by the ~~defendants~~ plaintiff, the answer of Cowan McClung & Co. to said bill, ^{separate demurrer and} exceptions endorsed on said answer by the plaintiff, said bill properly matured at rules as to E.W. Pennington, ^{filed by leave of court March 5th 1897} and Barbara J. Pennington ^{of this court} the decree entered in said cause at the March term, 1897, the amended bill of the plaintiff, the separate demurrer and answer of William Pennington, Guardian &c. to said amended bill, joinder in said demurrer and exceptions to said answer by the plaintiff the joint and separate demurrer and answer of James D. Pennington, J.L. Pennington, A.N. Pennington and John S. Burgan to said amended bill, joinder in said demurrer and general replication to said answer by the plaintiff, said amended bill properly matured at rules and set for hearing by the plaintiff as to the defendants, Cowan McClung & Co. and E.W. Pennington, Trustee, and Barbara J. Pennington, ^{on} against whom the process appears to have been served for more than fifteen days before the ^{first day of the of said court} June Term, 1897, the answer of Henry L. Newman and Etty Newman, infant defendants, by R.L. Pennington, their Guardian ad litem, ^{to said amended bill} general replication to said answer, the decree entered in said cause at the June Term 1897, ^{of said court} and was argued by

Counsel. On consideration whereof it is adjudged, ordered and decreed that said ~~xxx~~ original bill be taken for confessed as to Barbara J. Pennington and E.W. Pennington, Trustee, it appearing that they have each failed to appear, plead answer or demur, although they were duly served with process for more than fifteen days before the first day of the March term, 1897; ^{of said court} that said amended bill be taken for confessed as to Barbara J. Pennington, E.W. Pennington, Trustee, and Cowan McClung & Co, they failing to appear, plead demur to, or answer the same; and, it appearing to the court that the lands of William Pennington will not sell for a sum sufficient to pay the plaintiff's judgment and other judgments against the said defendants, that M.C. Ely, who is hereby appointed a special commissioner for the purpose, do ascertain and report to this court at its next term the lands owned by the said A.W. Pennington and John S. Burman, the liens operating on each tract, ^{showing priorities} the rental value of said lands, whether or not the said lands will rent in five years renting for a sum sufficient to pay the said liens, and any other matter deemed pertinent to himself or required by any party in interest; and that this cause be continued.

James A. Newman

vs J. L. Lhy.

Wm Pennington et al

Decree for an Ac-
count.

Eu. C. O. B. 6 p. 1874-5-6

(15-)

Enter this de-
cree. June 1878.

N. J. M.

James A. Newman Receiver &c.

vs.

William Pennington Guardian &c. et als.

This cause came on again this day to be further heard on the papers formerly read in the ~~NEW~~ original bill, the amended bill filed and regularly matured before the first day of this term, the answer of William Pennington, the joint answer of James D. Pennington, J. L. Pennington, A. N. Pennington and John S. Burgin to said amended bill, the answer of the infant defendants, Henry L. and Ettie Newman by R. L. Pennington their guardian ad litem, exceptions 1, 2 & 3 to the answer of William Pennington to said amended bill and general replication to each of said answers and was argued by counsel, on consideration whereof, the court is of opinion that the exceptions filed by the plaintiff to the answer of A. N. Pennington to said original bill are well taken and the same are sustained, and the court is also of opinion that the exception No. 1. to that part of the answer of William Pennington to said original bill beginning with the word "It" and in the line marked 1, ~~20~~ on page 1, to and including the word "estate" in line 11 on page 2 of said answer is well taken said exception is sustained all the other exceptions are overruled, and said cause is continued.

James A. Newman Rem'd

vs. $\frac{1}{3}$ Deane

William Punnett Quor 16th Dec

Eu. C.O.B. No 6 p. 28-9.

(10)

Enter this Deane

W. J. M.

June 16th 1897.

James A. Newman Receiver &c.

vs

3 Le Chas

Will Pennington Guardian &c. &c.

This cause came on this day to be heard on the bill of the complainant and exhibits therewith, The Demurrer and answers of The Defendants William Pennington A. N. Pennington and Edward McBlury &c and exhibits therewith answers and exceptions to each of said answers and was argued by Counsel. On consideration the Court is of opinion said said demurrers are not well taken and the same are overruled. The Court is further of opinion that James S Pennington John L Pennington and John S Burgan joint securities with A. N. Pennington on one of The bonds executed by William Pennington as guardian for four of The heirs at law of Francis Phillips and the infant heirs of Abbie Newman deceased, should be made parties to this suit it is therefore adjudged ordered and decreed that The Plaintiff amend his bill making parties thereto The said James S Pennington John L Pennington and John S Burgan, and all other questions arising upon the several exceptions to said answers are

J. A. Furman
Receiver T.C.

Wm. H. Deane

Wm. H. Deane

Ex. C. O. B. p. 349.

Enter this Deane

Mr. D. M.

March 8th / 1897

(3)

passed for future consideration.

And this cause is remanded to rules
there to be properly matured on
said amended bill.

To the Honorable W.T. Miller, Judge of the circuit court for Lee county, Virginia:

By a decree rendered at the June Term, 1898, of said court, in the chancery cause therein pending under the style of "James A. Newman, Receiver &c. vs. William Pennington et als." the undersigned was appointed a special commissioner and directed (to ascertain and report (1) the lands owned by A.N. Pennington and John S. Burgan, (2) the liens operating on each tract, showing priorities and amounts, (3) the rental value of said lands, whether or not the said lands will rent in five years renting for a sum sufficient to pay the said liens, and (4) any other matter deemed pertinent by himself or required by any party in interest.

I now beg leave to report as follows:

I gave notice to the attorneys for the plaintiff and defendants who directed me to proceed with the account.

A.N. Pennington owns a tract of land lying on Rock Lick in the Pocket containing 443 acres more or less; a tract of land lying on Fly's creek in the Pocket containing 335 acres; and a tract of land lying on the North side of Stone Mountain containing 150 acres. I get this information from the amended bill and the answer.

John S. Burgan, as your commissioner is informed and requested to report, has conveyed all his real estate to his children and certain of his grandchildren, which conveyances are being sought to be set aside in the chancery causes pending in said court entitled "Mary E. Lanningham vs. William Pennington et als." and Jennie and Lee Phillipps vs. William Pennington et als." which causes will be heard with this cause.

Your commissioner has made and hereto attaches a list of the liens against the said lands of the said A.N. Pennington which list is asked to be treated as a part of this report.

The lands of A.N.Pennington will not rent for enough in five years to pay said judgments.

All which is respectfully submitted,

M. G. Ely -

Special commissioner.

Virginia, Lee County, to wit:

I, L.T.Hyatt, a commissioner in chancery for the circuit court of Lee county, do certify that M.G.Ely this day appeared before me and made oath that he has been engaged 8 hours in making his report which is above written.

Given under my hand this the 28th day of February, 1899.

L. T. Hyatt

Cour. in Chy.

A List of the Liens against the Real Estate of A.N. Pennington.

First in Order of Priority.

A Judgt. rendered by the Circuit court of Lee county

in favor of the plaintiff against William and

A.N. Pennington for \$305.82

Int. on same from 3/1/'95 to 3/1/'99 193.40

Costs of former suit. 8.12 1007.34

Second in order of priority.

A Judgt. in favor of Pennington Gap Bank against J.L.

J.D. and A.N. Pennington for 150.00

Int on same from 2/25/'96 to 3/6/'99 27.30

Costs at law 8.16 185.46

A Judgt. in favor of Pennington Gap Bank against

J.L., J.D., and A.N. Pennington and L.M. Zion for 297.20

Int. on same from 1/6/'97 to 3/6/'99 38.63

Costs at law 9.76 345.59

A Judgt. in favor of Pennington Gap Bank against

William, J.L. and A.N. Pennington for 385.80

Int. on \$185.80 from 1/26/'97 to 3/6/'99 23.60

Int. on \$200.00 from 2/6/'97 to same. 25.00

Costs at law 9.16 443.56

Third in order of priority.

A Judgt. in favor of Pennington Gap Bank against J.L.

and A.N. Pennington, J.F. Skarps and R.L. Evans 100.00

Int. on same from 1/14/'96 to 3/6/'99 18.90

Costs at law .75 119.65-
Total 2101.60

James A. Newman
Receiver &c
vs. $\frac{1}{2}$ In Chancery.

Wm Pennington et als.

Report of M. S. Ely,
Commr.

Filed Feby 24 1899
A. B. Mursey
Clerk

(16)

Comm \$6.00

James A. Newman, Receiver &c.

Plaintiff.

vs.

In Chancery.

William Pennington, A.N. Pennington, Barbara J.

Pennington, Cowan, McClung & Co., E. Pennington, ~~xxxxxx, xxxxx~~

Trustee, James D. Pennington, John L. Pennington

~~John S. Pughan~~, and Henry L. Newman and Etty

Newman, the two last named being infants under

the age of twenty-one years.....Defendants.

This cause came on again this ~~the 5th day of March, 1899,~~ ^{day}
to be heard upon the papers formerly read in said cause, the re-
port of M.C. Ely, Special Commissioner, filed herein on the 24th day
of February, 1899, and was argued by counsel.

On consideration of all which, the said report having been
filed more than ten days and there being no exceptions thereto, it
is adjudged, ordered and decreed that the said report be and the
same is hereby confirmed; that the plaintiff recover of the de-
fendants, Wm. and A.N. Pennington the sum of one thousand and seven
dollars and thirty-four cents (\$1007.34), with legal interest on
eight hundred and five dollars and eighty-two cents (\$805.82), part
thereof, from the 1st day of March, 1899, until payment, and the
costs of this suit to be taxed by the clerk of this court, which
recovery is adjudged to be a first lien upon the lands of A.N. Pen-
nington mentioned in said report; that the Pennington Gap Bank
recover from the said Jno. L., Jas. D., and A.N. Pennington the sum
of one hundred and eighty-five dollars and forty-six cents (\$185.-
46) with legal interest on one hundred and fifty dollars (\$150.00),
part thereof, from the 6th day of March, 1899, until payment; that
the said Pennington Gap Bank recover from the said Jno. L., Jas. D.,
and A.N. Pennington the sum of three hundred and forty-five dollars
and fifty-nine cents (\$345.59), with legal interest on two hundred

and ninety-seven dollars and twenty cents (\$297.20), part thereof from the 6th day of March, 1899, until payment; that the said Pennington Gap Bank recover from the said Wm., Jno.L., and A.N. Pennington the sum of four hundred and forty-three dollars and fifty-six cents (\$443.56), with legal interest on three hundred and eighty-five dollars and eighty cents (\$385.80), part thereof, from the 6th day of March, 1899, until payment, which three last mentioned recoveries are adjudged to be of equal priority and second lien against the said lands of A.N. Pennington; that the said Pennington Gap Bank recover of the said Jno.L., and A.N. Pennington the sum of one hundred and nineteen dollars and sixty-five cents (\$119.65), with legal interest on one hundred dollars (\$100.00), part thereof, from the 6th day of March, 1899, until payment, which last mentioned recovery is adjudged to be a third lien upon the real estate of the said A.N. Pennington mentioned in said report; that unless the said A.N. Pennington or some one for him do within ~~thirty~~ ^{sixty} days from the adjournment of this court pay to the parties entitled the said recoveries, then L.T. Hyatt, who is hereby appointed a special commissioner for the purpose, will, after having executed bond with good security before the clerk of this court in the penalty of four thousand dollars, conditioned to faithfully perform his duties hereunder, and after having advertised the time, terms and place of sale for at least thirty days prior to day of sale, by posting written or printed notices thereof at three or more public places in Lee county, one of which shall be the front door of the courthouse of said county, another the post-office in the town of Pennington Gap, and another in the neighborhood where each tract of land to be sold lies, proceed on the first day of some term of the county court for Lee county, to offer for sale the said lands of the said A.N. Pennington, by public auction to the highest bid-

der, on a credit of one ~~and Two~~ ^{and Three} years time except the costs of this
suit and commissions of sale which he will require to be paid down
in cash on the day of sale, and he will take bonds with approved
security for the deferred payments; that, in making said sale, the
said commissioner sell the three tracts mentioned in said report
separately, or even in still smaller parcels if he finds it advan-
tageous to do so; that the said commissioner report his action
hereunder to some future term of this court; and that this cause
be continued.

James A. Newman
Receiver &c

vs $\frac{3}{2}$ In Lehey.

Wm Pennington et
al.

Deeved for sale

Entered Chancery
Order Book No 6
Pages 313-14 & 15-

(17)

Enter this

Nov. 13th
~~Nov~~ 1899.

H. or W. S. Clerk

To the Honorable H.A.W.Skeen, Judge of the Circuit Court for Lee county, Virginia:

Your undersigned commissioner begs leave to report that pursuant to the decree of sale entered at the last term of this court in the chancery cause therein pending entitled "James A. Newman, Receiver &c. vs. Wm. Pennington et als." he executed before the clerk of this court the bond required by said decree; that he advertised the sale of said land as required by said decree by posting type-written notices thereof, one at the front door of the court-house, one at the post-office at Pennington Gap, and another or rather two others in the "pocket country" where said land lies; that on the 19th day of February, 1900, at the front door of the court-house of this country, (the time and place mentioned in said notice as the time and place of sale), he offered the "Rock Lick tract" and the "Stone Mountain tract", being adjoining tracts, for sale by public outcry, to the highest bidder, on the terms mentioned in said decree of sale. After considerable biddings Mr. L.M. Zion bid for said land the sum of \$1075.00, and that being the highest and best bid offered the said land was knocked off to the said L.M. Zion at that price. The said L.M. Zion then paid to your commissioner the sum of \$ 91.72, being the costs of suit and commissions of sale. Said Zion afterwards executed his three bonds for the sum of \$327.76 each, bearing interest from date of sale, and due in one, two and three years respectively, with L.M. Zion and Ira G. Sprinkle, as security thereon. Your commissioner deems this security sufficient. The sale pays a little more than the plaintiff debt after giving credit thereon of \$72.00 which is in the hands of R.L. Pennington, Commissioner.

Your commissioner did not sell the "Ely Creek lands" because the other and junior creditors benefited thereby agreed to a post-

ponement .

Your commissioner deems this sale a reasonable one, though the lands may probably be worth more money.

The sale of the Rock Lick lands and Stone Mt. lands together was at the request of the owner, Mr. A. N. Pennington, who was of opinion that they would bring much more when sold together than if they had been sold separately.

Allof which if respectfully submitted.

Two or three tracts sold off the Rock Lick lands by A. N. Pennington to J. W. Yost, — Johnson were excepted in the sale here reported

~~Special Commissioner.~~

L. P. Hyatt,
Special Commr.

James A. Newman,
Recr. &c

v3. } Report of
 } Sale

Wm Pennington
 Pet ab

Filed March 13th 1900
A.B. Munsey Clerk

(18)

Received

of

Lemington Gap Va Decr 7 1900

J. T. Gay Jr Spec Comr -

Nine Hundred Twenty Eight ⁹⁶/₁₀₀ Dollars

in full of Balance due me in Case of
Myself against Wm Pennington et al

\$78 ⁹⁶/₁₀₀

James A Newman

Recr

978.96
Atty's Conire 51.52
1030, x8

To the Honorable H.A.W.Skeen, Judge of the circuit court
for Lee County, Virginia:

Having been directed by a decree rendered ~~in the case of~~
by the said court at the June Term 1900 in the chancery cause
therein pending entitled James A.Newman, Receiver &c. vs.William
Pennington et als. to collect from the purchaser L.M.Zion and
his sureties the three bonds for the sum of \$327.76 each, and
disburse the same to the parties entitled, respectfully reports
that on the 7th day of December,1900, the said L.M.Zion paid
to him the sum of \$1030.48, of which I retained \$51.52, or 5%
thereof as my fee, and paid the balance of \$978.96 over to the
plaintiff in said suit to whom it was due, and took his receipt
therefor and file the same herewith. The 5% retained as a
fee was by agreement, and I gave the said Newman a receipt for
the same to be used in his settlement of his account as such.

The said Zion is now entitled to a deed for the said land.

Very respectfully submitted,

L.T. Hyatt
L.T.Hyatt, commissioner.

I. T. Hyatt, Commissioner.

Very respectfully submitted.

The said Zion is now entitled to a deed for the said land.
the same to be used in his settlement of his account as such.

See was by agreement, and I gave the said Newman a receipt for

therefor and file the same herewith. The said retained as a

plaintiff in said suit.

On the 27th of December, 1900, the said Newman, Receiver, et al.

his duties the three bonds of \$100,000 each, and

penalties et al. to the said Newman, Receiver, et al.

wherein pending entitled James A. Newman, Receiver, et al. vs. William

by the said court at the June Term 1900 in the chancery cause

Having been directed by a decree rendered inxxxxxxx

for Lee County, Virginia:

To the Honorable H. A. W. Green, Judge of the circuit court

James A. Newman
Receiver et al.
vs { DuChy.
Wm Pennington et al.

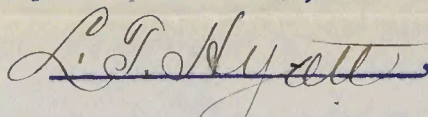
Report of L. F. Hyatt
of Collection and
disbursement of pur-
chase money Bonds.

Filed March 5th
1901.
A. B. Munnery, Clerk
(21)

To the Honorable H.A.W.Skeen, Judge of the Circuit Court
for Lee County, Virginia:

Having been appointed a special commissioner by a decree entered on the 5th day of March, 1901, in the chancery cause pending in said Court entitled "James A. Newman, Receiver & c. vs. Wm. Pennington et als.", and thereby directed to make, execute and deliver to the purchaser, L.M. Zion, a good and sufficient deed conveying to him, with special warranty, the real estate purchased by him under the proceedings of this cause, I respectfully report that I have complied with said order as best I could, and herewith file the deed which I have made to Mr. Zion for the inspection and approval of the court.

Very respectfully,



Special Commissioner.

Special Commissioner.

James A. Newman,
Receiver &c.
vs. Lu Lhy
Wm Pennington et als.

Report of L. F. Nyatt,
Comm. Showing execu-
tion of deed to L. M.
Ziaa.

Filed March 6, 1901.
A. W. Munsey Clerk

23

entered on the 6th day of March, 1901, in the chancery cause
Having been appointed a special commissioner by a decree
for Lee County, Virginia:

To the Honorable H. A. W. Sken, Judge of the Circuit Court

James A. Newman, Receiver &c.

Plaintiff.

vs.

(In Chancery.)

~~Decree Final.~~

William Pennington et al^{ls}.

Defendants.

This cause came on this day to be heard upon the papers formerly read in the cause, and the report of L.T. Hyatt, special commissioner, this day filed, showing the execution of by him of a deed to L.M. Zion whereby he conveys to the said L.M. Zion the "Stone Mountain tract" and the "Rock Lick tract" of land purchased by the said Zion under the proceedings of this cause, and was argued by counsel. On consideration whereof, and there being no exceptions to the said report or deed, it is adjudged ordered and decreed that they each be confirmed and approved; and that the said L.M. Zion pay to the said L.T. Hyatt the sum of five dollars for his services in making said deed, for which execution may issue.

And it being suggested to the court that there are two other causes pending in this court having now the same object as this, to wit: the cause entitled "Mary E. Lanningham vs. Wm. Pennington et als." and the cause entitled "Jennie & Lee Philipps vs. Wm. Pennington et als.", in one of which a decree for an account has been entered at this term, It is further ordered that this cause be hereafter heard along with said two causes, and that commissioner Goins consider the pleadings and papers in this cause in making up his report directed by said decree in one of said other causes. And the cause is continued.

in one of said other causes. And the cause is continued.
in this cause in making up his report directed by said decree
and that commissioner going consider the pleadings and decrees
that this cause be hereafter heard along with said two causes,
an account has been entered at this term, It is further ordered
Jipps vs. Wm. Pennington et als.", in one of which a decree for
Pennington et als.", and the cause entitled "Mary E. Pennington vs. Wm.
as this, to wit: the cause entitled "Mary E. Pennington vs. Wm.
other causes pending in this court having now the same object
And it being suggested to the court that there are two
execution may issue.

of five dollars for his services in making said deed, for which

James A. Newman,
Receiver &c.

vs. } See l. by.
}

Wm Pennington et als.

Decree Confirming
report & deed to L.
M. Zies &c.

Entered on O. B. Nov. 1896

(24)

Enter this decree
H. A. W. Stuen

March 6th 1901.

William Pennington et als.

vs.

(In Chancery.)

Decree Final.

James A. Newman, Receiver &c.

Plaintiff.

Defendants.

NOTICE.

LAND SALE.

Pursuant to the requirements of a decree rendered by the Circuit Court of Lee county, at its November term, 1899, in the chancery cause therein depending, entitled "James A. Newman, Receiver &c. vs. Wm. Pennington et als.", I will, on the 19th day of February, 1900, that being the first day of the February term of the County court for said county of Lee, offer for sale by public outcry to the highest bidder, at the front door of the court-house of said county, the following described real estate of A.N. Pennington, to satisfy the liens against same, to wit:

First.--The tract of land lying on Rock Lick in the Pocket.

Second.--The tract of land lying on Ely's creek, in the Pocket.

Third.--The tract of land lying on the North side of Stone Mt.

But only so much of said lands will be sold as will be sufficient to pay the costs of suit and commissions of sale, and the liens reported against said lands in said suit. The sale or sales will be made on a credit of one, two and three years time, in equal installments, except a sum sufficient to pay the costs of said suit and commissions of sale which will be required to be paid down in cash. The purchaser or purchasers will be required to give bonds with good security for the deferred payments.

January 16th, 1899.

L. I. Stuart

Special Commissioner.

I certify that the bond required to be executed by the said Commissioner by the decree above mentioned has been executed.

Given under my hand this 17th day of January, 1900.

A. B. Munsey, Clerk.

Given under my hand this 15th day of January, 1901.

Commissioner of the General Land Office has been executed.

I certify that the bond required to be executed by the said

Special Commissioner.

January 1901, 1901.

and the proceeds of the same will be used to pay bonds

and commissions of sale which will be required to be paid down in

advance, except and sufficient to pay the costs of said sale

made on a credit of one, two and three years time, in which in-

reported assessed said lands to said sale. The sale of sales will

to pay the costs of said and commissions of sale, and the time

but only so much of said lands will be sold as will be sufficient

and the said lands on the 1st day of 2nd and 3rd

Second--The land of land 1 in on the 1st day of 2nd and 3rd

First--The price of land 1 in on the 1st day of 2nd and 3rd

except the land against same, no and:

county, the following described real estate of A.H. Pennington, to

the highest bidder, as the same good of the good-better to said

good for said county of 1st, offer for sale by public order to

1900, and being the first day of the 1st day of the County

as the Pennington as also, I will, on the 1st day of February,

and the said lands on the 1st day of the 1st day of the County

and the said lands on the 1st day of the 1st day of the County

and the said lands on the 1st day of the 1st day of the County

present to the commissioners of the General Land Office by the Gen-

PAID BY

NOTIC

James A. Newman, Receiver &c
vs' Ξ In Chancery:

W^m Pennington et als. Defendants.

Exceptions of the plaintiff to
the answer of the defendant, W^m
Pennington, filed March 4th 1897.

First.- That part of said an-
swer beginning with "It" near the
bottom of page one to and includ-
ing line eleven on pag. 2. is ex-
cepted to because pleaded too late.
If such expenditures were made
the said W^m Pennington should
have taken credit for them in
his settlements before the commis-
sioner of accounts, which settle-
ments were mentioned by him in
his answer to the complainants
former bill on which the judgment
sued on was obtained.

Note what he says in that an-
swer. lines 26 + 32 inclusive on page
1: "From this settlement it will be
seen that your respondent owes
the said Abigail, the sum of \$805.82½
with interest thereon from the first
day of March 1895; subject to a cred-
it few dollars credit paid since
that day, which the plaintiff knows

all about and the amount thereof, as well as your respondent. Your respondent does not remember this amount exactly, as he has left his book of accounts at home, but it will not exceed \$50.00.

2
Second.— That part of said answer from "But" in line 16 page 2 to and including line 20 on page 3 is excepted to as affording no defense to this suit.

It may be true that the fund in said guardian's hands came from the sale of real estate, but money arising from the sale of real estate is personally especially when it is in the hands of a guardian. The whole proceeding in the chancery cause referred to in the answer, to wit: *Wyatt & Remington vs. Kniser et al* shows an intention to convert the land into personal estate to wit: money, and as such, on the death of the wife it descends to the husband.

3
Third:— That part of said answer on page 3 beginning with "And" in line 2 and ending with "time" the

King.

last word in line 8, is excepted to because pleaded too late. If said money was so invested the deeds should have been taken in the name of the wards, not his own. And in his answer he should tell us what lands he did invest in. This plea should have been made to former suit and before judgment. But instead of setting up this defense to former suit, he there says that he made his annual settlements as guardian and files a copy of one of them showing that on March 1st 1895- he had in his hands of their money \$3037.58.

Why this defendant let a personal judgment go against him by his own agreement if he had invested in land?

4. Fourth. - That part of said answer on page 3 ~~begin~~ lines 9 to 19 inclusive is excepted to because pleaded too late. This defense should have been made to former judgment suit and before judgment.

James A. Newman

by C. T. Duncan }
J. T. Ryan } Counsel.

Recr.

Jas. A. Newman

23 3 Exceptions.

Wm Pennington et al

Filed March 8th 1897

A. B. Munsey Clerk

(6)

James A. Newman, Recr &c.

vs

Chy.

Wm Pennington and others

Exceptions of the plaintiff to
the answer of the defendant, Wm Pen-
nington, filed this day, March 4th 1897.

(1)

That part of said answer be-
ginning with "It near the bottom
of page 1 to and including line 11
on page ~~2~~ 2 is excepted to because
pleaded too late and because he
ought to have taken credit for such
expenditures in his settlements be-
fore the Commissioner of accounts
which settlements were mentioned
and shown by the said Wm Pen-
nington in his answer to the com-
plainant's former bill which is here
referred to.

(2)

That part of said answer begin-
ning with line 13 page 2 to and
including line 8 on page ~~3~~ because
pleaded too late. This plea should
have been made before judgment.
Besides this part of said answer
is contradicted by the facts. If said
Pennington invested the money why
did he continue to have himself
charged with it and let a person-

Not his own and
he should tell us
what losses they are

al judgment go against him by his
own agreement. If invested for his work
~~the funds approved were used in his name and~~

That part of said answer beginning
with line 9 on page 3, and down to
and including line 19 on said page is
excepted to because pleaded too late.
This plea should have been made to
former bill.

James A. Newman, by
Counsel

C. J. Duncan
L. T. Hyatt } Counsel.

3/ That part of said answer beginning with
the word "But" in line 16 page 2
down to and including part of line 2 on
page 3 is excepted to as affording no
defense to this suit.

It may be true that the fund in said
~~Administrators~~ Woodman's hands came from
the sale of real estate, but money arising
from the sale of real estate is personally
especially when it is in the hands of
a guardian. The whole proceedings
in the chancery cause referred to in
the answer to wit Hyatt & Purington
vs Kiser and wife show an intention
to convert the money fund into

personal estate to wit money
and as such on the death of
the wife it descends to the husband
Duncan & Hgalt
for Plaintiff

James A Newman

vs. 3 Chy.

Wm Remington
et als.

Exceptions to the
Answer of Wm
Remington.

(7)

James A. Newman receiver &c
~~of William Pennington Guardian &c. et als~~

William Pennington Guardian &c. et als

Exceptions to the answer
of William Pennington to
the amended bill filed in
in said cause.

1st: That part of said answer in line 13, page 1, beginning with the word "and whether", and to and including line 22 on said page 1. Is excepted to because, if there is a liability incurred on the first bond executed in the County Court of Lee County, different, and distinct from the liability incurred on the second bond, which was executed to enable said guardian to receive the fund arising from a sale of the real estate, the amount of such separate liability should be given by the defendant.

2nd: That part of said answer beginning with the words, "and respondent", in line 2, Page 2, and extending to and including the whole of line 5 on said page is excepted to, because affording no defense to said respondent, if the proposition asserted in that part of said answer is correct, the same is a defense that can be made by the guardian ad litem and not by said respondent, because he has no interest therein.

3rd. That part of said answer beginning with line 6. and ending with line 11. on page 2. is excepted to for reasons stated in exceptions to the answer to the original bill where the same defense is sought to be made. It is not shown that said investment was ever made by direction of or with the sanction of a court of chancery, and for the further reason that said respondent utterly fails to disclose the amount of his wards money, so invested in lands. This is a fact known to him and he should be required, if he relies on said investment as a defense to make full disclosures of the land purchased and the amount of money invested therein.

Respectfully submitted.

*C. T. Durcan,
L. T. Hyatt for
Plaintiff*

Filed, June 10th 1897
A B Munsey Clerk

(14)

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

We Command you, That you summon *William Pennington*
A. N. Pennington. Barbara J. Pennington,
Cowan McElung & Co and E. W. Pennington Trustee

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held
for the said Court on the *1st* Monday in *February*, 189 *7*, to answer a
bill in Chancery, exhibited against *them* in our said court by
James A. Newman

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-
house, the *22nd* day of *January*, 189 *7*, and in the
12 *1st* year of the Commonwealth.

A. B. Munsey Clerk.

Stallerton

James A Newman
 vs. { SUPENA.
 { IN CHANCERY.
 Wm Pennington et al
 Durcan & Hyatt p. q.

To 1st Feby Rules.

CIRCUIT COURT.

Exh. Anteb. Jan 30
 1897 by deliverize
 and office copy of the
 within summons to
 Wm Pennington
 and H. A. Pennington
 Barbara J. Pennington
 E. S. Specton & S
 for W. P. Weston
 S. I. 6

(2)

Regular service of the of the within summons
 is as set forth by the within deliverize
 1897 by J. A. Newman from their office.
 Dec 28

Southwest Virginian, }
Jonesville, Va. }

The Commonwealth of Virginia,

To the Sheriff of the County of Lee Greeting:

We command you to summon William Pennington, A. M. Pennington
Barbara J. Pennington, Cowan, Meldinger, E. W. Pennington, Trustee, James
D. Pennington, John B. Pennington, John B. Burgan, and Newman
Newman the two last named being the infant heirs of Abbie Newman deceased
to appear at the Clerk's office of our Circuit Court of the County of Lee at the court-house thereof, at the

Rules to be holden for said court, on the 3rd Monday in May, 1897, to answer

an amended
bill in Chancery, exhibited against them in our court by
James A. Newman Receiver &c

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said court, at the court-house, the 23rd day of

April 1897, and in the 12th year of the Commonwealth.

A. B. Munsey Clerk.

A copy—Teste:

Clerk,

(9)

James A. Newman Receiver
SUBPENA
vs. {
IN CHANCERY.

William Pennington et al
Duncan Hyatt P. Q.

TO *2nd May* Rules.

CIRCUIT COURT.

Executed May 11
1897 By *Delia* and
inserted office copy of
summons to
William Pennington
Arch Pennington
Barth J Pennington
E. M. Pennington
James D Pennington
John L Pennington
John S. Burgain
Henry L. Newman
E. L. Newman
E. S. S. S. S. S. S.
for *W. M. Weston & Co.*

Southwest Virginian, }
Jonesville, Va. }

The Commonwealth of Virginia,

To the Sheriff of the County of Lee Greeting:

We command you to summon William Pennington, A. M. Pennington, Barbara J. Pennington, George McBlung, E. W. Pennington trustees James D. Pennington, John L. Pennington, John S. Ruggen and Newman and Newman the two last named being the infant heirs of Abbie L. Newman deceased to appear at the Clerk's office of our Circuit Court of the County of Lee at the court-house thereof, at the

Rules to be holden for said court, on the 3rd Monday in May, 1897, to answer an amended bill in Chancery, exhibited against them in our court by

James A. Newman Receiver

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said court, at the court-house, the 23rd day of

April 1897, and in the 12th year of the Commonwealth.

A copy—Teste:

A. B. Munsey Clerk.
A. B. Munsey Clerk,

vs. { SUBPCENA
IN CHANCERY.

P. Q.

TO Rules.

CIRCUIT COURT.

J. A. Newman
vs. Bill Le Chey

William Huntington et al.

1897 1st. Feby rules Spa and
+ D. Jr

" 2nd Feby rules D. Jr Conf
+ Cause set for hearing

December the 8th 1899

Plaintiffs Costs

Clerk	15.22 ✓
Tax	1.50 ✓
Stapleton Shiff	8.50
att'y	15.00 ✓
G. A. L.	5.00 ✓
Conrr	6.00 ✓
Estimated	10.00
	<u>\$61.22</u>